Supreme Court, U.S.
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No. 98-298

In The

# Supreme Court of the United States

October Term, 1997

BENT DIETRICH,

*Petitioner,*

*vs.*

PATRICIA CHEW, Individually and as Administratrix of the Estate of Daren Chew, deceased and WILLIAM CHEW,

*Respondents.*

*On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit*

## RESPONDENTS' BRIEF IN OPPOSITION

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## TABLE OF CONTENTS


| | *Page* |
|---|---|
| Table of Cited Authorities ..... | ii |
| There is No Compelling Reason to Grant the Writ ... | 1 |
| The Question Presented for Review Reflects Petitioner's Fundamental Misunderstanding of the Court of Appeals' Decision ..... | 2 |
| I. The Court Of Appeals Did Not Disregard First Circuit Precedent In Holding That Dietrich Is Subject To Jurisdiction Pursuant To Rule 4(k)(1). ..... | 3 |
| II. The Second Circuit Did Not Disregard Rhode Island Precedent In Holding That Dietrich Is Subject To Jurisdiction Pursuant To Rule 4(k)(1). ..... | 6 |
| III. The Second Circuit Did Not Conflate The Separate Provisions of Rule 4(k)(1) and 4(k)(2) ..... | 7 |
| Conclusion ..... | 9 |

## TABLE OF CITED AUTHORITIES

*Page*

**Cases:**

*Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985) ..... 6

*Chew v. Dietrich*, 143 F.3d 24 (2nd Cir. 1998) ..2, 4, 5, 6, 7, 8

*McKenney v. Kenyon Piece Dye Works, Inc.*, 582 A.2d 107 (R.I. 1990) ..... 7

*Messier v. Belisle*, 640 A.2d 959 (R.I. 1994) ..... 6

*Nowak v. Tak How Investments, Ltd.*, 94 F.3d 708 (1st Cir. 1996), *cert. denied*, __ U.S. __, 117 S. Ct. 1333 (1997) ..... 4

*PDK Labs., Inc. v. Friedlander*, 103 F.3d 1105 (2nd Cir. 1997) ..... 5

*Roger Williams Gen. Hosp. v. Fall River Trust Co.*, 423 A.2d 1384 (R.I. 1984) ..... 6

*World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980) ..... 5

**Rules:**

Federal Rules of Civil Procedure 4(k) ..... 3, 7, 8

Federal Rules of Civil Procedure 4(k)(1) .....2, 3, 5, 6, 7, 8

## *Table of Cited Authorities*


| | *Page* |
|---|---|
| Federal Rules of Civil Procedure 4(k)(2) | 2, 3, 7, 8 |
| Sup. Ct. R. 10 | 1, 2, 3 |
| Sup. Ct. R. 10(a) | 1, 6, 7, 8 |
| Sup. Ct. R. 10(c) | 8 |

## THERE IS NO COMPELLING REASON TO GRANT THE WRIT

"A petition for a writ of certiorari will be granted only for compelling reasons." Sup. Ct. R. 10. Although the list is not exclusive, Rule 10 includes a number of examples which "indicate the character of the reasons the Court considers" compelling. *Id.*

Among the reasons listed is one in which "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter. . . ." *Id.* at 10(a). Petitioner Bent Dietrich ("Dietrich") relies on this rationale to invoke the jurisdiction of the Court, saying that

> the compelling reason the Court should consider involves a Second Circuit Panel entering a decision in conflict with the First Circuit regarding the same important matter, the law for establishing personal jurisdiction in tort cases under Rhode Island law."

Petition For Writ of Certiorari at 1 (hereinafter "Petition at __").

Contrary to Dietrich's assertion, as discussed below, the Second Circuit made its finding that Dietrich is subject to personal jurisdiction with specific reference to the law of the First Circuit. Ultimately, its decision was a necessarily factbound determination which is neither in conflict with First Circuit law nor appropriate for review on a writ of certiorari.[1]

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1. The Petition does not explicitly rely in the alternative on any of the other compelling reasons for review listed in Rule 10. In fact, none of those other reasons are implicated by the Second Circuit's decision.

Rule 10 states that "[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Sup. Ct. R. 10. As discussed below, the language of the appellate decision reveals no misstatement of law. Dietrich's bare belief that the Second Circuit reached the wrong conclusion as to his amenability to personal jurisdiction does not justify the review mechanism of certiorari.

## THE QUESTION PRESENTED FOR REVIEW REFLECTS PETITIONER'S FUNDAMENTAL MISUNDERSTANDING OF THE COURT OF APPEALS' DECISION

In presenting the question for review by this Court, Dietrich states, *inter alia*, that:

> [T]he Second Circuit has misread the provisions of the newly revised Rule 4(k) of the Federal Rules of Civil Procedure by combining the separate requirements of 4(k)(1) and 4(k)(2) to find jurisdiction over Petitioner even though neither, standing alone, would have provided such jurisdiction. . . .

Petition at i.

Contrary to Dietrich's characterization of the opinion which is the subject of this Petition, the Court of Appeals explicitly stated that it had analyzed 4(k)(1) and 4(k)(2) separately, and that in this case Dietrich is subject to jurisdiction according to the *independent* application of *either* sub-paragraph of Rule 4(k). *See Chew v. Dietrich*, 143 F.3d 24, 30 (2nd Cir. 1998). ("In our view, Dietrich's contacts with Rhode Island are *alone* sufficient to sustain the exercise of personal jurisdiction over him under the Due Process Clause.") (Emphasis supplied).

Although Dietrich may disagree with the conclusion reached by the Court of Appeals, its opinion neither implicitly nor explicitly states that the Second Circuit read 4(k)(1) and 4(k)(2) *together* to find personal jurisdiction.

Read fairly, the Second Circuit's decision does not present the question which was formulated by Dietrich in his petition. Rather, Dietrich is actually calling upon this Court to review a fact-bound decision of the Second Circuit that Dietrich is subject to jurisdiction under *either* Rule 4(k)(1) or 4(k)(2).

Based on his critical misinterpretation that the Second Circuit melded the 4(k) inquiry into a single standard, Dietrich goes on to construct an argument that the Second Circuit disregarded First Circuit and Rhode Island law and construed Rule 4(k) so as to violate the Rules Enabling Act.[2] *See* Petition at 5-9. Because Dietrich's initial assertion is incorrect, however, his conclusions are fatally flawed. In fact, when Dietrich's mistake is corrected, this Court is not faced with any of the errors described in the Petition, nor is any other issue presented which is either consistent with the examples enumerated in Sup. Ct. R. 10 or with this Court's underlying principles of review. The alleged errors are discussed briefly below:

## I.

## THE COURT OF APPEALS DID NOT DISREGARD FIRST CIRCUIT PRECEDENT IN HOLDING THAT DIETRICH IS SUBJECT TO JURISDICTION PURSUANT TO RULE 4(k)(1).

At several junctures in his petition, Dietrich claims that the Second Circuit ignored First Circuit precedent in applying

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2. Dietrich actually asserts four errors. However, as described in footnote 4, two of the alleged errors are addressed together in Part II.

its own standards of due process to the jurisdictional analysis. For example, Dietrich claims that

> the Second Circuit explicitly refrained from reversing the District Court's holding as to what the outcome would have been under First Circuit law, thereby tacitly admitting that it was applying its own due process analysis to the exclusion of the First Circuit's.

Petition at 7. Dietrich goes on to claim that "the Second Circuit effectively admitted that its decision was inconsistent with First Circuit precedent" as it relates to the question of proximate cause. *Id.* at 12.

In fact, the Second Circuit discussed the relatedness test with specific reference to First Circuit law:

> Where the defendant's contacts with the jurisdiction that relate to the cause of the action are more substantial . . . it is not unreasonable to say that the defendant is subject to personal jurisdiction even though the acts within the state are not the proximate cause of the plaintiff's injury.
>
> This type of distinction appears to have been recognized even in the First Circuit which, by its own assessment, is considered to be one of the strongest proponents of the proximate cause test.

*Chew*, 143 F.3d at 29 (citing *Nowak v. Tak How Investments, Ltd.*, 94 F.3d 708, 715-16 (1st Cir. 1996), *cert. denied*, __ U.S. __, 117 S. Ct. 1333 (1997)). The court went on to discuss the flexibility of the relatedness concept as described by the First Circuit in *Nowak*.

The Second Circuit concluded its discussion of relatedness by saying that given the significance and purposefulness of Dietrich's contacts with Rhode Island, those state contacts were enough to support the constitutional exercise of personal jurisdiction pursuant to the 4(k)(1) analysis.[3] *Chew*, 143 F.3d

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3. Dietrich's Statement of the Case suggests that Daren Chew ("Chew") was an unpaid volunteer who sought out the opportunity to sail on the RAINBOW, then goes on to say that

> [i]t is immaterial for purposes of this appeal whether Sharkey [Dietrich's hired "boatsman"] actively recruited Chew in Newport or whether Chew learned of the opportunity to sail aboard the RAINBOW through other means,

claiming further that "neither this finding nor any [of the District Court's] findings of fact were disturbed during appellate review." Petition at 2. Quite to the contrary, the Second Circuit relied on the fact (among other relevant contacts) that Dietrich recruited Chew in holding that Dietrich was subject to personal jurisdiction:

> Dietrich entered Rhode Island intending to assemble a crew for a round-trip voyage to Bermuda. While he may not have recruited Chew personally, the person who did was acting on his behalf . . . Dietrich could reasonably anticipate that he might be "haled into court" in Rhode Island to respond to a suit to recover damages for injuries that crew members recruited in Rhode Island might suffer during the round-trip voyage.

*Chew*, 143 F.3d at 30 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). Indeed, the Second Circuit's finding that Dietrich recruited Chew was in keeping with the requirement that the factual allegations relating to jurisdiction must be construed in the plaintiff's favor when, as in this case, no evidentiary hearing had been held as to jurisdictional matters. *PDK Labs., Inc. v. Friedlander*, 103 F.3d 1105, 1108 (2nd Cir. 1997) (citations omitted).

at 30. The Second Circuit's conclusion is consistent with First Circuit law on this point, and the extensive discussion of the First Circuit law of relatedness makes it clear that the Second Circuit's decision is not "in conflict with the decision of another United States court of appeals on the same important matter. . . ." Sup. Ct. R. 10(a).

## II.

## THE SECOND CIRCUIT DID NOT DISREGARD RHODE ISLAND PRECEDENT IN HOLDING THAT DIETRICH IS SUBJECT TO JURISDICTION PURSUANT TO RULE 4(k)(1).

Dietrich relies on two Rhode Island cases which it claims "point unerringly to the conclusion that personal jurisdiction would not have attached in state court under these circumstances." Petition at 10. However, the determination as to whether jurisdiction may be found in any given circumstance is necessarily factbound and the pair of cases cited by Dietrich are readily factually distinguishable from the instant case.[4] *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 485 (1985).

Dietrich makes much of the fact that the torts at issue in *Messier v. Belisle*, 640 A.2d 959 (R.I. 1994) and *Roger Williams Gen. Hosp. v. Fall River Trust Co.*, 423 A.2d 1384 (R.I. 1984) took place outside of Rhode Island. However, the place of the

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4. The issue as to whether the Rhode Island long-arm statute could bring Dietrich within its grasp based on Dietrich's Rhode Island contacts addresses both Dietrich's contention that jurisdiction should not lie based on Rhode Island law, and his claim that the Second Circuit wrongly applied its own Due Process standard without regard to Rhode Island precedent. As described below, even if the Second Circuit had ignored Rhode Island law on this point (which it did not), the result is entirely consistent with Rhode Island law.

tort is not the determinative factor in the jurisdictional inquiry. *See McKenney v. Kenyon Piece Dye Works, Inc.*, 582 A.2d 107 (R.I. 1990) (finding that the single jurisdictional contact of a German manufacturer that sold a machine to a Maine company through a Rhode Island distributor twenty years prior to an accident in Maine which injured a Maine plaintiff was sufficient to support the exercise of jurisdiction in Rhode Island under the state's long-arm statute). The nature and purposefulness of the contacts is the crux of the inquiry, and " 'all that need be shown for jurisdiction to be proper is a relationship among the defendant, the forum and the litigation.' " *Chew*, 143 F.3d at 30 (quoting *McKenney*, 582 A.2d at 108). The Second Circuit found that given "the substantial relationship between Dietrich's contacts with Rhode Island and Chew's death," the Supreme Court of Rhode Island would find the contacts "more than sufficient to sustain personal jurisdiction over Dietrich in this case." *Chew*, 143 F.3d at 31. While it would have been impossible for the Second Circuit to predict with certainty the outcome under Rhode Island law, its decision was well-reasoned and consistent with Rhode Island precedent. Neither of the cases cited by Dietrich leads to the conclusion that the Second Circuit "has decided an important federal question in a way that conflicts with a decision by a state court of last resort. . . ." Sup. Ct. R. 10(a).

## III.

## THE SECOND CIRCUIT DID NOT CONFLATE THE SEPARATE PROVISIONS OF RULE 4(k)(1) AND 4(k)(2).

Dietrich claims that the Second Circuit has conflated the separate provisions of Rule 4(k) such that its decision violates the Rules Enabling Act. Petition at 8-9. Dietrich appears to reach this conclusion based in large part on his own characterization of his non-Rhode Island contacts as so

"insubstantial and causally unrelated to the alleged tort, [that] the Second Circuit could not have relied on these additional contacts in finding personal jurisdiction" under a separate 4(k)(2) analysis. *Id.* at 6; *id.* at 17.

The Second Circuit did not subscribe to Dietrich's characterization, however, finding those contacts sufficiently purposeful and related to subject Dietrich to jurisdiction by virtue of the independent application of 4(k)(2), even if he were not already subject to 4(k)(1) jurisdiction:

> Since the accident at issue arose from the operation of a yacht that had been maintained and used in the United States exclusively for several months prior to the race, it is not unfair to Dietrich to require him to respond to a suit in the United States that relates to the operation of the yacht and concerns injuries to a crew member recruited in the United States.

*Chew*, 143 F.3d at 30.

Clearly, the Second Circuit found Dietrich's United States contacts to be significant enough to warrant jurisdiction. Just as clearly, the Court of Appeals stated that this 4(k)(2) finding was made in the alternative, if the Rhode Island contacts under the 4(k)(1) analysis were insufficient to support jurisdiction. *See id.* at 28. The Second Circuit's analysis of 4(k) neither "decided an important federal question in a way that conflicts with relevant decisions of this Court" nor did it "so far depart[ ] from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this Court's supervisory power. . . ." Sup. Ct. R. 10(c); *id.* at (a).

## CONCLUSION

For the foregoing reasons, Respondents ask that this Court deny the Petition for Writ of Certiorari submitted by Petitioner Bent Dietrich.

Respectfully submitted,

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